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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Redevelopment of Spectrum to  
Encourage Innovation in the  
Use of New Telecommunications  
Technologies

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ET Docket 92-9

To: The Commission

COMMENTS OF THE  
AMERICAN PUBLIC POWER ASSOCIATION

By: Ted Coombes

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January 13, 1993

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Pursuant to Section 1.415 of the Commission's Rules, the American Public Power Association (APPA) hereby respectfully submits its comments on the Third Notice of Proposed Rule Making (NPRM), FCC 92-9, released October 16, 1992, in the above captioned matter.

I. Introduction

APPA is the national service organization representing more than 1,750 local, publicly owned electric utility systems throughout the country.

Approximately 50 publicly owned electric utilities operate fixed microwave systems in the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz (2 GHz) bands. These facilities range in size and complexity from simple, one-path analog systems to multichannel digital systems spanning more than 900 total miles. APPA members use these facilities for real-time control, monitoring, and dispatch of electric generation and transmission facilities, as well as long- and medium-haul remote data and voice communications. Typical usage would include: (1) remotely detecting, isolating, and clearing fault conditions on high-power transmission lines within milliseconds, thereby preventing blackouts and loss

of lives and property; (2) bringing nuclear, thermal, and hydroelectric generation stations on- and off-line to instantaneously match system capacity with demand; (3) forwarding critical telemetry data between and among a utility's substations, operations control centers, generation stations, and other utilities; and (4) controlling mobile radio base stations and other radio systems used for load control, environmental monitoring, and nuclear plant operations.

Because of the importance of these 2 GHz microwave facilities to its member systems in maintaining the reliability of electrical service, APPA has been an active participant in this proceeding.

## **II. Standard, Five-Year Voluntary Negotiation Period Should Be Adopted**

In its First Report and Order and Third Notice of Proposed Rule Making in this docket, the Commission allocated the 1850-1990, 2110-2150, and 2160-2200 MHz bands for the development and implementation of emerging technologies on a shared basis with the incumbent fixed microwave licensees. The Report and Order portion provides for a method for involuntary relocation of incumbent licensees to other spectrum or alternative media, but seeks to encourage voluntary negotiations between all parties to avoid involuntary relocation. To accomplish this objective, the Report and Order establishes the framework of a "transition period" to allow voluntary negotiations between new technology providers and incumbent licensees before the involuntary relocation procedure may be invoked.

The Commission envisions a transition period which begins on the effective date of the Report and Order on the Further Notice of Proposed Rule Making dealing with the rechannelization of the higher frequency microwave bands and ends after a specific period of time. The effect of this transition period is to postpone the effective date of the involuntary relocation procedure to allow new technology service providers and incumbent licensees to voluntarily reach agreements over relocation of fixed microwave paths to higher frequencies or alternative media, thus encouraging marketplace negotiations and minimizing the impact on the Commission, its staff, and its resources in resolving disputes.

Such a proposal might be workable if all the potential emerging technology service providers were licensed for all potential markets at the beginning of the transition period. However, as the Commission recognized in Para. 28, problems arise if emerging technology service providers are issued licenses toward the end of the transition period or after it has expired. This approach also raises a number of other concerns on which the Commission seeks comment, including whether different transition periods may be appropriate for certain areas or due to certain technical considerations (note 36), whether no transition period is appropriate in some instances (para. 27), and whether it would be appropriate to also provide a minimum time period for voluntary negotiations after the grant of a license to an emerging technology service provider (para. 28).

Rather than a "fixed" transition period commencing when the rechannelization of the higher frequency microwave bands is ordered, APPA supports a "rolling" or "sliding" voluntary negotiation period. We propose that the voluntary negotiation period extend for at least five years commencing

on the date a new technology service provider is licensed to construct in a particular area.

Five years is an appropriate time period for negotiations, reflecting information compiled by both APPA and the Utilities Telecommunications Council (UTC). Each organization separately surveyed its affected membership to assess impacts of relocation from the 2 GHz band. The UTC survey indicated that the average time required by its respondents to relocate would be four years. Responses to APPA's survey on this question spanned a broad range (from one year to in excess of 10 years), but were generally consistent with UTC's four-year average.

The five-year voluntary negotiation period should apply in each instance from the date each emerging technology licensee is authorized to construct in a particular area, regardless of what type technology is licensed, whether the area to be served is rural or urban, whether the spectrum in the area is crowded or not, whether certain technical or other conditions apply (e.g., long paths, coastal effects, etc.), or whether the new technology operates under a blanket license. In the event unlicensed devices or services are approved, the five-year voluntary negotiation period should apply as well, commencing on the date the equipment is authorized by the Commission to operate on a particular frequency.

This approach has several advantages. First, its application is uniform, providing equal protections to all new technology and incumbent microwave licensees. Second, it ensures that all incumbent licensees have a reasonable period of time to voluntarily discuss relocation before being subjected to an

involuntary relocation program. Finally, it renders moot all the other questions raised by the Commission in relation to the transition period.<sup>1</sup>

In the event the Commission retains the fixed transition period approach, APPA favors a minimum eight-year period, as provided in the Senate version of the FY 1993 FCC appropriations bill.<sup>2</sup> Should a fixed transition period be ordered, a minimum voluntary negotiation period of at least five years should also be ordered, based on the average time APPA's affected member utilities estimate would be required to complete relocation.

### **III. Definition of "Comparable Alternative Facilities"**

The First Report and Order provides that, in the event the involuntary relocation process is invoked, the emerging technology service provider must provide "comparable alternative facilities" for the incumbent licensee being relocated (para. 24). In para. 25, the Commission solicited recommendations on how to define comparable alternative facilities.

If the FCC creates a process that permits and encourages parties to privately negotiate relocation agreements, there is no need to define what constitutes comparable alternative facilities. However, APPA does concur with the comments of UTC in its Petition for Clarification and/or Reconsideration in this docket that:

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<sup>1</sup>/ See First Report and Order and Third Notice of Proposed Rule Making in this docket, paras. 27 and 28 and note 37.

<sup>2</sup>/ See Congressional Record, Volume 123, Number 107, July 27, 1992, pp. S10346-S10347.

oAn incumbent 2 GHz microwave licensee should not be moved to non-microwave replacement facilities unless the incumbent specifically agrees to the use of such facilities;<sup>3</sup>

o An incumbent private 2 GHz microwave licensee should be moved only to private replacement facilities, unless the incumbent specifically agrees to accept service from a common carrier, private carrier, or other third party;<sup>4</sup>

o While the emerging technology licensee must bear the costs, the incumbent 2 GHz microwave licensee should have the right to oversee the engineering, construction, and testing of its microwave replacement facilities. Such oversight authority should include the right of the incumbent to engineer, build, and test the replacement facilities itself or to select the contractors.<sup>5</sup>

#### **IV. Mediation Is Best Solution in Cases Involving Involuntary Relocation**

In para. 25 of the Third Notice of Proposed Rule Making, the Commission solicited comments on how to resolve disputes during involuntary relocation. Specifically, the Commission asked for input on whether mediation or

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<sup>3</sup>/ See Petition for Clarification and/or Reconsideration in ET Docket No. 92-2, filed by the Utilities Telecommunications Council on November 30, 1992, pp. 3-4.

<sup>4</sup>/ Id., pp. 4-5.

<sup>5</sup>/ Id., pp. 5-6.

arbitration should be utilized in addition to the possible use of negotiated rule making.

APPA believes mediation is the best approach to facilitate a solution in the best interests of all parties to such a dispute. The rules adopted by the Commission should allow any party to submit any issue or issues to mediation, with a fixed period for completion of a binding agreement. If all parties have not reached an agreement during this specified period, any or all of the parties should be allowed to submit the matter to the Commission for a final decision.

## **V. Conclusion**

Rather than a fixed transition period before rules establishing an involuntary relocation period become effective, APPA supports a sliding voluntary negotiation period of at least five years, commencing on the date each new technology licensee is authorized to construct in a particular market. If the Commission insists on a fixed transition period, APPA would prefer an eight year period after rechannelization of higher microwave frequencies is ordered, with a minimum voluntary negotiation of five years in all instances before any involuntary relocation process could be invoked.

APPA believes that no definition of comparable alternative facilities is necessary if the rules adopted by the commission permit and encourage all parties to privately negotiate voluntary relocation agreements. Finally, APPA supports the use of mediation to resolve disputes in the event that involuntary relocation is invoked.



WHEREFORE, THE PREMISES CONSIDERED, the American Public Power Association respectfully requests the Commission to take actions consistent with the views expressed herein.

Respectfully submitted,

American Public Power Association

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